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June 14, 2023

Via ECF

The Honorable Robert W. Lehrburger
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Ware v. Brann, et al.*, 21-CV-2028 (PGG) (RWL)

Dear Magistrate Judge Lehrburger:

I am an Assistant Corporation Counsel and a supervisor in the Office of the Corporation Counsel of the City of New York, the Honorable Sylvia O. Hinds-Radix, attorney for the Defendants in the above-referenced action. Plaintiff alleges a violation of his constitutional rights due to the conditions of his confinement at the Vernon C. Bain Center.

I write pursuant to the Court's Order dated May 17, 2023 (ECF No. 89), directing Defendants to: (1) arrange a call with Plaintiff, to take place by June 7, 2023, to ask if Plaintiff intends to file a motion for summary judgment; and (2) file a letter by June 14, 2023, reporting whether either party intends to move for summary judgment. The Court's May 17, 2023 Order further directed that if either party intends to file a motion for summary judgment, the motion is due by July 14, 2023; any opposition is due by August 31, 2023; and any reply is due by October 16, 2023. Defendants also write pursuant to the Court's Order dated June 14, 2023 (ECF No. 92), in which the Court directed Defendants to respond to Plaintiff's letter dated June 7, 2023, filed on ECF on June 13, 2023 (ECF No. 91).

Pursuant to the Court's May 17, 2023 Order, Defendants report that they intend to move for summary judgment in this matter. Upon information and belief, however, it appears that due to an oversight, the attorney who has been assigned to handle this matter did not arrange the call with Plaintiff. Defendants apologize to the Court and to Plaintiff for not having done so and intend to do so expeditiously. Plaintiff's June 7, 2023 letter advised the Court that the call with Defendants' counsel had not taken place.

Accordingly, Defendants respectfully request an extension of time, *nunc pro tunc*, to arrange the call with Plaintiff to ask if he intends to file a motion for summary judgment and a corresponding extension of time to file the letter with the Court regarding Plaintiff's intent as to the motion. Defendants also respectfully request an extension of time of the briefing schedule for the parties to serve and file the motion for summary judgment. Because Plaintiff is incarcerated and is proceeding *pro se*, the instant request is made directly to the Court. This is the first request for an extension of these deadlines.

The reason for the requested extensions is that the attorney in this office who has been assigned to handle this matter unexpectedly went out on emergency leave, starting yesterday, June 13, 2023. While this office is hopeful that he will return from the emergency leave early next month, it is not certain at this time when, exactly, he will return to the office. As such, in the event that he does not return to the office in early July, this office likely will reassign this matter to another attorney to begin the process of reviewing the record and drafting the motion papers. The requested extension of time of the briefing schedule, therefore, is lengthier than normally would be requested to afford any newly-assigned attorney an opportunity to review the lengthy record and to draft and file the motion papers. The requested extension also will enable an attorney in this office to arrange the call with Plaintiff to ask if he intends to file a motion for summary judgment and to report this to the Court.

Accordingly, Defendants respectfully request that the Court grant an extension of time: (1) until June 30, 2023, to arrange the call with Plaintiff to ask if he intends to file a motion for summary judgment; (2) until July 7, 2023, to file the letter with the Court regarding Plaintiff's intent as to a summary judgment motion; (3) of 60 days for the briefing schedule of the motion for summary judgment with any motion due by September 12, 2023; any opposition due by October 30, 2023; and any reply due by December 15, 2023.

I thank the Court for its consideration of this matter.

Respectfully submitted,

/s/ Philip S. Frank

Philip S. Frank


cc: **Via First-Class Mail**

Walter Ware
DIN#22B1979
Elmira Correctional Facility
P.O. Box 500
Elmira, NY 14902
Plaintiff pro se

Extension granted as requested. The Clerk of Court is respectfully requested to mail a copy of this order to pro se Plaintiff and note service on the record.

SO ORDERED:

6/14/2023


HON. ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE